

# MISSING PAGE

OGC Has Reviewed

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amount by which his advance funds have been depleted. The Director signs and transmits to the Treasury this voucher containing a certification by him as follows:

"I certify that expenditures were actually made in the amount on this voucher according to reports in this office and that it would be prejudicial to the public interest to disclose the names of the recipients and dates and names of the places in which the expenditures were made. The expenditures were made incident to collecting and analyzing confidential information and data bearing upon the national security of the United States. It was impracticable to obtain receipts for payments made without revealing identity and jeopardizing the success of the activity. Expenditures are properly chargeable to the appropriation indicated hereon according to authority in the "National War Agencies Appropriation Act for 1944, 78th Congress, First Session in Public Law 139, approved 12-July 1943."

The voucher then is certified by an authorized, bonded Certifying Officer at this agency. The Treasury Department processes the voucher in its usual manner, the Chief Disbursing Officer issuing a check payable to the Agent-Cashier. Upon receipt of the check the Agent-Cashier deposits it in his official bank account and reports the receipt thereof in his usual monthly statement of account submitted to the Chief Disbursing Officer of the Treasury.

In order properly to protect the interests of the Government bonded representatives of the Special Funds Branch of OSS have been stationed in each of the foreign theatres in which this agency conducts its military operations pursuant to Military Order of the President dated June 13, 1942. Foreign currency is supplied to each of them by the Agent-Cashiers in Washington through the media of the Department of the Treasury, Navy Department, Department of State, Finance Department of the United States Army, cable transfer and the dispatch of foreign currency purchased in the open market in this country. In order that these representatives have sufficient funds on hand at all times to meet necessary current expenditures abroad (including unforeseen demands resulting from directives of the Joint Chiefs of Staff, the Theatre Commanders and the various Strategic Services Officers in the theatres of operation) substantial balances of various and numerous foreign currencies must be maintained overseas. These foreign currencies are purchased for actual use by employees and agents of OSS in carrying out confidential war missions entrusted to this agency. Upon advice of the Department of the Treasury, funds used by Special Funds Branch to purchase such foreign currencies are considered at the time of such purchases to have been "expended" within the meaning of the voucher certification by the Director set forth above. While such currency is viewed as a commodity

for such purposes, adequate current accounts are maintained, of course, for each field representative. As of June 30, 1944, there will be in the hands of each representative abroad substantial balances in the form of actual foreign currencies.

3. In view of the foregoing, you have requested that we advise you with respect to the following matters:

(a) Should the dollar funds used to purchase the foreign currency in the hands of field representatives as of June 30, 1944, be considered in all respects as having been actually "expended" at the time of such purchases, or should an appropriate bookkeeping entry be made as of July 1, 1944, crediting the appropriation for the fiscal year 1944 and debiting the appropriation for the fiscal year 1945? You have further asked whether (if we determine that the funds cannot be viewed as "expended") such a bookkeeping entry would not be sufficient properly to adjust the appropriations, inasmuch as it would be impossible under all the circumstances to reconvert such balances to dollars; and whether the balances so credited to the 1944 appropriation may thereafter be used to discharge other valid obligations incurred during fiscal year 1944;

(b) One of the Agent-Cashiers who deals exclusively in foreign exchange continually makes purchases of foreign currencies in this country for re-sale to OSS representatives departing for abroad. Due to the varying prices at which he purchases such foreign currency and the fact that he sells at set rates, occasional net profits or losses result to him. Must the Agent-Cashier cover all receipts (including such net profits) immediately into the Treasury as miscellaneous receipts, or is it satisfactory for him to take such receipts into his Agent-Cashier bank account and return them to the Treasury by decreasing his subsequent voucher to the Treasury in the amount of said receipts (including his net profits)? The latter course has hitherto been followed during the current fiscal year, with the approval of the Department of the Treasury.

4. With respect to the questions set forth in paragraph 3 (a) above, you are advised that dollar funds used to purchase foreign currencies for use in confidential OSS operations overseas should be considered after such purchases as having been "expended" within the meaning of the voucher certificate to be executed by the Director.

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information, then it would seem that the provision for an adequate investigation had already been satisfied. If, on the other hand, the Executive cannot draw a conclusive deduction from the information before him, he is under an obligation to ask for sufficient facts to enable him to lay the case before the Director with an opinion. In turn, the Director is equally entitled to whatever additional information he may himself require to make the final decision. The "adequacy" of the investigation is thereby reduced to whatever the Executive or the Director subjectively needs to reach a decision.

3. In the present problem, this office does not find any legal objection to approval of the action suggested. Although it is noted in Appendix III.A. that the book value is taken rather than the lower actual cost, it is our understanding that a corresponding adjustment is made in our accounts to eliminate any illusory profit.

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Chrono  
Legal Decisions

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